

# Senate Study Bill 1081

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY  
GENERAL BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act creating a private cause of action for certain consumer  
2 fraud violations.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSS 1105DP 82  
5 rh/gg/14

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1 1 Section 1. NEW SECTION. 714F.1 TITLE.  
1 2 This chapter shall be known and may be cited as the  
1 3 "Private Remedy for Consumer Fraud Act".  
1 4 Sec. 2. NEW SECTION. 714F.2 DEFINITIONS.  
1 5 1. "Advertisement" means the same as defined in section  
1 6 714.16.  
1 7 2. "Agricultural merchandise" means merchandise sold to be  
1 8 used in the production of agricultural, horticultural,  
1 9 viticultural, or dairy products; of livestock, wildlife,  
1 10 poultry, bees, or fish, or products thereof; or of any and all  
1 11 products raised or produced on farms.  
1 12 3. "Consumer" means any of the following:  
1 13 a. A natural person or the person's legal representative.  
1 14 b. In connection with the advertisement, sale, or lease of  
1 15 agricultural merchandise or office supplies or services, or  
1 16 the solicitation of contributions for charitable purposes, a  
1 17 partnership, corporation, company, trust, business entity or  
1 18 association, political organization as defined in section  
1 19 13C.1, religious organization as defined in section 13C.1,  
1 20 public or nonpublic school, college, university, or a  
1 21 fraternal benefit society as defined in section 512B.3.  
1 22 4. "Consumer merchandise" means merchandise offered for  
1 23 sale or lease, or sold or leased, primarily for personal,  
1 24 family, or household purposes; agricultural merchandise; or  
1 25 office supplies and services.  
1 26 5. "Deception" means the same as defined in section  
1 27 714.16.  
1 28 6. "Merchandise" means the same as defined in section  
1 29 714.16.  
1 30 7. "Office supplies and services" means any goods, or  
1 31 services incident to the use of such goods, including but not  
1 32 limited to supplies and equipment and promotional advertising,  
1 33 to be used in the operation of any office. "Office supplies  
1 34 and services" does not include goods or services purchased for  
1 35 the purpose of resale.  
2 1 8. "Person" means the same as defined in section 714.16.  
2 2 9. "Sale" means any sale or offer for sale of consumer  
2 3 merchandise for cash or credit.  
2 4 10. "Unfair practice" means the same as defined in section  
2 5 714.16.  
2 6 Sec. 3. NEW SECTION. 714F.3 PROHIBITED PRACTICES.  
2 7 1. A person shall not engage in an unfair practice,  
2 8 deception, fraud, false pretense, false promise, or  
2 9 misrepresentation, or the concealment, suppression, or  
2 10 omission of a material fact with the intent that others rely  
2 11 upon the concealment, suppression, or omission, in connection  
2 12 with the advertisement, sale, or lease of consumer  
2 13 merchandise, or the solicitation of contributions for  
2 14 charitable purposes.  
2 15 2. A person shall not engage in any practice that is in  
2 16 violation of any of the following:  
2 17 a. Chapter 126.  
2 18 b. Section 321.69.  
2 19 c. Chapter 516D.

d. Section 516E.5, 516E.9, or 516E.10.  
e. Chapter 555A.  
f. Section 714.16, subsection 2.  
g. Chapter 714A.  
Sec. 4. NEW SECTION. 714F.4 PRIVATE CAUSE OF ACTION.  
1. A consumer who suffers damage or injury as the result of a practice declared to violate this chapter may bring an action at law to recover actual damages. The court may order such equitable relief as it deems necessary to protect the public from further violations, including temporary and permanent injunctive relief.  
2. If the court finds that a person has violated this chapter, the court shall award to the consumer the costs of the action and to the consumer's attorneys their reasonable fees. Reasonable attorney fees shall be determined by the value of the time reasonably expended by the attorney and not by the amount of the consumer's recovery.  
3. Any claim under this section shall be required to be proved by a preponderance of the evidence.  
4. If the finder of fact finds that a practice declared to violate this chapter is willful, in addition to an award of actual damages, statutory damages of up to three times the amount of actual damages may be awarded to a prevailing consumer.  
5. This section shall not affect a consumer's right to seek relief under any other theory of law.  
Sec. 5. NEW SECTION. 714F.5 ATTORNEY GENERAL NOTIFICATION.  
1. A party filing a petition, counterclaim, cross-petition, or pleading in intervention alleging a violation under this chapter, within seven days following the date of filing such pleading, shall provide a copy to the attorney general and, within seven days following entry of any final judgment in the action, shall provide a copy of the judgment to the attorney general.  
2. A party appealing to district court a small claims order or judgment involving an issue raised under this chapter, within seven days of giving oral or written notice of the appeal, shall notify the attorney general in writing and provide a copy of the pleading raising the issue and a copy of the small claims court order or judgment.  
3. Except for appeals of small claims court orders or judgments described in subsection 2, a party appealing an order or judgment involving an issue raised under this chapter, within seven days following the date such notice of appeal is filed with the court, shall notify the attorney general in writing and provide a copy of the pleading raising the issue and a copy of the court order or judgment being appealed.  
4. Upon timely application to the court in which an action involving an issue raised under this chapter is pending, the attorney general may intervene as a party at any time or may be heard at any time. The attorney general's failure to intervene shall not preclude the attorney general from bringing a separate enforcement action.  
5. All copies of pleadings, orders, judgments, and notices required by this section to be sent to the attorney general shall be sent by certified mail unless the attorney general has previously been provided such copies of pleadings, orders, judgments, or notices in the same action by certified mail, in which case subsequent mailings may be made by regular mail. Failure to provide the required mailings to the attorney general shall not be grounds for dismissal of an action under this chapter, but shall be grounds for a subsequent action by the attorney general to vacate or modify the judgment.

#### EXPLANATION

This bill creates a private remedy for certain consumer fraud Act violations.

The bill creates a private cause of action for consumer fraud violations. The bill provides that a consumer who suffers damage or injury as a result of a prohibited practice declared to violate the bill may bring an action at law to recover actual damages, and may seek court protection from further violations, including temporary and permanent injunctive relief. In addition, a prevailing consumer in such an action may be awarded costs and reasonable attorney fees.

The bill defines a prohibited practice to include an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with the intent that others rely on the concealment, suppression, or omission, in connection

4 31 with the advertisement, sale, or lease of consumer  
4 32 merchandise, or the solicitation of contributions for  
4 33 charitable purposes.  
4 34 The bill authorizes the attorney general to oversee private  
4 35 consumer fraud actions, including small claims court actions,  
5 1 by requiring a party filing a petition, counterclaim,  
5 2 cross=petition, or pleading in intervention alleging a  
5 3 violation under the bill to provide a copy of the relevant  
5 4 documents, including judgments and notices of appeal, to the  
5 5 attorney general. In addition, the attorney general may  
5 6 intervene as a party in a private consumer fraud action at any  
5 7 time, or may be heard in such an action at any time.  
5 8 The bill further provides that failure to provide all  
5 9 mailings of petitions, orders, judgments, and notices of  
5 10 appeal to the attorney general shall not be grounds for  
5 11 dismissal, but shall be grounds for a subsequent action by the  
5 12 attorney general to vacate or modify the judgment.  
5 13 LSB 1105DP 82  
5 14 rh:rj/gg/14.1